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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,798	09/19/2001	Daniel Albertus Jozef Dijs	2120/77997	1409

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14  
EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 08/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/955798

Applicant(s)

DIJS

Examiner

S. WEINSTEIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on 7/24/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 25-39 is/are pending in the application.
- ☐ Of the above claim(s) 39 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 25-38 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

Claim 39 has been withdrawn from further consideration since an RCE and cannot add or change statutory classes of invention. Also, applicant has constructively elected the article claims directed to the pouch (class 426, subclass 77). The newly added method claim is separately classifiable (class 426 subclass 433) and the article can be used in methods other than that recited in claim 39. For example, the pouch could be placed in a pot of hot water without pressure.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 38 is rejected under 35 U.S.C. 112, first paragraph for containing New Matter. It is not seen that the specification as originally filed necessarily and inherently supports that the pouch is configured to withstand a high pressure therein. Where is there support for this language in the specification? How high is "high? Also, although everything after the word "whereby" (i.e. the whereby clause) is presumably inherently derivable from the structure recited above the whereby clause, the specification does not appear to disclose the functional statements in the whereby clause.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Siccardi (Ep '555775) in view of applicants admission of the prior art, further in view of Bosch-Siemens (De. 7430109), Illy et al (Ep. 710462), Bloemen (Belg. 620881), Cisaria (5,638,741), MacCorkell ('474), Blanc ('149), Illy ('694) and Grykiewicz et al ('787) for the reasons fully and clearly detailed in the Office action mailed January 23, 2003, Paper No. 10.

The amendments to claims 25-37 are only seen to shift the positioning of phrasings without changing the scope of the claims. Thus, as fully detailed in the last Office action mailed January 23, 2003, the claims recite a pouch that is capable of being used with a coffee machine. The pouch of Siccardi in view of the art taken as a whole would be capable of resting on a non-grooved portions of the bottom of a well section. Also, in regard to claim 38, since applicant discloses a coffee pouch comprising two disk-shaped filtering sheets sealed together by a peripheral sealing seam for use with a device that provides hot wafer and since Siccardi and the art taken as a whole teaches the same thing, then it would appear that the pouch of Siccardi would also inherently function as recited in the whereby clause.

All of applicant's remarks filed July 24, 2003 have been fully and carefully considered but are not found to be convincing. Applicant's remarks are still directed to limitations not found in the claims. The claims only positively recite a pouch. They do not positively recite a pouch and a coffee making apparatus. Specifically, the claims only positively recite a pouch capable of being used in coffee machine. The machine

itself is not positively recited. There would be many types of pouches that would be capable of being used in a coffee machine. The pouch as claimed is no different from the pouch disclosed by Siccardi in view of the art taken as a whole. It has two pill shaped portions of filter paper seamed together by an annular sealing seam. Siccardi and the art taken as a whole even teaches that the pouch is dimensioned and configured such that when the pouch is placed in a coffee machine the central portion of the pouch rests in the well. Whether or not the central portion would rest on the non-grooved portions of the bottom of the well section is immaterial since the coffee machine is not positively recited. In any case, as a practical matter, the bottom of the central portion of the pouch would rest on whatever the bottom surface of the well comprises—i.e. non-grooved portions of the bottom of the well or non-perforated portions of the bottom of the well. It is repeated that the structure of the pouch is the same between the prior art and the claims and that only the structure of the non-recited well portion of the apparatus differs; but the apparatus is not positively recited. Finally, applicant urges that the size of the container yields optimal extraction of coffee, but the container is not a positive element of the claim and, as noted previously, the art taken as a whole clearly teaches dimensioning the pouch to the dimensions of the container apparatus. See Paper No. 10, pages 3 to 4 in this regard.


Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (703) 308-0650. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

S. Weinstein/dh  
August 19, 2003

  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
8/20/03